UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| UNITED STATES OF AMERICA, | ) | |
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| Plaintiff, | ) | |
| | ) | |
| v. | ) | No. 1:18-cr-00266-JRS-MJD |
| | ) | |
| DEVAN D. EVANS, | ) | -01 |
| | ) | |
| Defendant. | ) | |

**Order on Motion to Suppress**

Devan D. Evans has moved to suppress all evidence and statements resulting from an alleged illegal search and seizure. Despite not filing a separate motion requesting an evidentiary hearing, *see* S.D. Ind. L.R. 7-1(a), the motion to suppress requests an evidentiary hearing.

"It is well established that '[e]videntiary hearings are not required as a matter of course.'" *United States v. Schreiber*, 866 F.3d 776, 781–82 (7th Cir. 2017) (quoting *United States v. McGaughy*, 485 F.3d 965, 969 (7th Cir. 2007)). A district court is required to conduct an evidentiary hearing "only when a substantial claim is presented and there are disputed issues of material fact that will affect the outcome of the motion." *United States v. Edgeworth*, 889 F.3d 350, 353 (7th Cir. 2018) (quoting *United States v. Curlin*, 638 F.3d 562, 564 (7th Cir. 2011)). Here, there are no disputed issues of material fact that would affect the outcome of the motion to suppress, so the request for an evidentiary hearing is **denied**.

## I. Background

Devan Evans began serving a Marion County Community Corrections ("MCCC") sentence on April 18, 2017. (ECF No. 43-1.) He was required to sign a MCCC Contract that set forth his obligations under the MCCC Electronic Monitoring Program. As part of the program, Evans was on home detention and was confined to his residence unless he had preapproval from MCCC for a specific activity such as employment. (ECF No. 43-1 ¶ 13; ECF No. 43-2, Jones Decl. ¶ 4; ECF No. 43-1 ¶ 13.) Evans was required to have electronic monitoring equipment with him at all times; this included a GPS that tracked his movements. (ECF No. 43-2, Jones Decl. ¶ 4.) He was prohibited from tampering with, removing, or otherwise damaging the electronic monitoring equipment. (ECF No. 43-1 ¶ 6.) If Evans travelled to an unauthorized location, he would violate the terms of his community corrections contract. (ECF No. 43-2 ¶ 4.)

To ensure compliance with the community corrections program, the contract allows law enforcement to conduct searches and seizures. (Jones Decl. ¶ 5; ECF No. 43-1 ¶ 4). The contract provides: "You waive your right against search and seizure, and shall permit MCCC staff, or any law enforcement officer acting on a [sic] MCCC's behalf, to search your person, residence, motor vehicle, or any location where your personal property may be found, to insure compliance with the requirements of community corrections." (ECF No. 43-1 ¶ 4.) Evans signed and dated the contract, agreeing to comply with its terms and conditions. (ECF No. 43-1 ¶ 37.)

Evans also viewed an orientation video in which the terms of the community corrections contract were explained. (ECF No. 43-2, Jones Decl. ¶ 4.) The video advises MCCC participants that they must allow law enforcement to enter and search their residence at any time and to search their person or property upon reasonable suspicion of a violation of the terms of the community corrections contract.

On May 18, 2019, ATF Task Force Officer ("TFO") Christopher Cooper and Law Enforcement Liaison Jill Jones conducted a compliance check at Evans' residence. (ECF No. 43-2 ¶ 7.) Jones had been informed that Evans was traveling to unauthorized locations while out on work passes, and she had reviewed Evans' tracking data which confirmed that to be the case; this was a violation of the terms of his contract. (ECF No. 43-2 ¶ 6.) Jones and Cooper did not have a warrant. They asked for permission to enter the residence, and Evans let them into his home. While conducting the home visit, Jones observed what appeared to be marijuana residue on top of a digital scale in the kitchen. (ECF No. 43-2 ¶ 8.) Cooper searched the master bedroom and found bundles of money totaling $17,720. (ECF No. 43-2 ¶ 9.) A search warrant was obtained, and a further search of the property led to the discovery of a black Gucci bag in the backyard that contained controlled substances, a functioning digital scale, and a handgun. (ECF No. 43-2 ¶ 10.)

## II. Discussion

Evans contends that the search and seizure at his residence were unreasonable under the Fourth Amendment because the search was not supported by any suspicion. He acknowledges that a community corrections participant may consent to a

suspicionless search but argues that the language of consent must be clear and unambiguous.

The government responds that the search was lawful. Specifically, it argues that under the unambiguous terms of the community corrections contract, Evans waived his right against search and seizure. Moreover, even if reasonable suspicion was required, according to the government, the search was supported by reasonable suspicion that Evans had violated the terms of his community corrections contract.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, . . . [and] houses . . . against unreasonable searches and seizures . . . ." U.S. Const. amend. IV. A warrantless search or seizure is presumptively unreasonable. *United States v. Correa*, 908 F.3d 208, 218 (7th Cir. 2018), *petition for cert. filed*, (U.S. June 3, 2019) (No. 18-1519). The exclusionary rule typically vindicates the Fourth Amendment's protections by keeping out the unlawfully obtained evidence. *United States v. Slone*, 636 F.3d 845, 848 (7th Cir. 2011).

The parties agree that the Fourth Amendment analysis is shaped by the state law governing the terms of Evans' community corrections supervision. *See United States v. White*, 781 F.3d 858, 861 (7th Cir. 2015). In arguing that the search of his residence was unreasonable, Evans relies on *Jarman v. State*, 114 N.E.3d 911 (Ind. Ct. App. 2018), *trans. denied,* 2019 WL 949417 (Ind. Feb. 21, 2019), and in arguing the search was lawful, the government relies on *State v. Vanderkolk*, 32 N.E.3d 775 (Ind. 2015).

In *Vanderkolk*, a community corrections participant had agreed that under the terms of the community corrections program, an officer could enter his "residence at

any time without prior notice to search upon probable cause." 32 N.E.3d at 778. Officers conducted a warrantless and suspicionless search of the residence. *Id.* at 776, 778. The Indiana Supreme Court considered whether the search had been authorized by consent by looking at the language in the community corrections participant handbook, which "conditioned [the participant's] search consent upon the existence of probable cause." *Id.* at 778. The court concluded that "the search condition was not clearly expressed and the defendant was not unambiguously informed" and that he "consented only to searches upon probable cause"; therefore, the court held that the search and seizures were unlawful under the Fourth Amendment. *Id.*

In *Jarman*, the defendant was on community corrections and had signed an agreement allowing law enforcement officers to search his "person or property without a warrant and without probable cause." 114 N.E.3d at 913. The state argued that this language waived the defendant's Fourth Amendment rights and consented to suspicionless searches." *Id.* at 914. The court determined that the waiver language "does not unambiguously mean 'I agree to a search without reasonable suspicion.'" *Id.* at 915. In dicta, the court said that had "the State wanted [the defendant] to be subject to suspicionless searches as a condition of entering community corrections, it should have included in its waiver form language like 'without suspicion,' 'without reasonable suspicion,' 'without reasonable cause,' or 'without cause.'" *Id.* Because the waiver did not include such language, the court concluded that the search violated the Fourth Amendment. *Id.*

The language in Evans' community corrections contract is not like the language at issue in *Vanderkolk* or *Jarman*. Evans waived his "right against search and seizure" and agreed to "permit MCCC staff, or any law enforcement officer acting on a [sic] MCCC's behalf, to search [his] person, residence, motor vehicle, or any location where [his] personal property may be found, to insure compliance with the requirements of community corrections." (ECF No. 43-1 ¶ 4.) Unlike the language in *Vanderkolk*, Evan's contract does not condition any search upon probable cause. Unlike the language in *Jarman*, the waiver is not qualified by a limitation to searches "without probable cause." The only limitation on the consent to search in Evans' contract is that the search must be "to insure compliance with the requirements of community corrections." (ECF No. 43-1 ¶ 4.) The waiver language is clear and unambiguous and there is no dispute that the purpose of the officers' home visit was to insure Evan's compliance with the community corrections program. (ECF No. 43-2, Jones Decl. ¶¶ 6–7.)

Furthermore, the search of Evans' residence was supported by reasonable suspicion. "'[R]easonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence"; reasonable suspicion "requires at least a minimal level of objective justification . . . and more than an 'inchoate and unparticularized suspicion or hunch' of criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 123–24 (2000) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Jones stated that she conducted the home visit because she had been informed Evans was traveling to unauthorized locations while out on work passes, and

she had reviewed Evans' GPS tracking data, which confirmed that to have been the case and established a violation of his MCCC contract. (ECF No. 43-2 ¶ 6.) Therefore, even assuming that the language in the orientation video amended the language in the MCCC contract to require reasonable suspicion, that standard is satisfied here. The initial search of Evans' residence was based on reasonable suspicion and was therefore reasonable. Based on the discovery of the digital scale, marijuana residue, and large quantities of cash, a search warrant was obtained for Evans' residence, and that warrant led to the discovery of the controlled substances and firearm. That search, too, was reasonable under the Fourth Amendment.

**Conclusion**

For the foregoing reasons, Evans's Motion to Suppress (ECF No. 39) is **DENIED**.

**SO ORDERED.**

Date: 7/9/2019

JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

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